**Supreme Court gives hope to some death-row inmates**

**The Supreme Court ruled Monday that, under extraordinary circumstances, courts should accept death row appeals even after a one-year statute of limitations has expired.**

The high court ruled 7 to 2 on Monday that under certain extraordinary circumstances courts should allow an appeal to be filed even after the one-year deadline has expired.

The decision came in the case of Florida death row inmate Albert Holland, who lost his right to file a federal appeal of his death sentence when his lawyer missed the one-year deadline established under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA).

In Holland’s case, a panel of the Eleventh US Circuit Court of Appeals ruled that his attorney’s conduct was not egregious enough to warrant setting aside imposition of the deadline.

The attorney would have to have acted with “bad faith, dishonesty, divided loyalty, or mental impairment” to be excused from the deadline. Negligence – even gross negligence – wasn’t enough, the appeals court said.

In reversing that decision, the Supreme Court said the appeals court’s standard was “too rigid.”

“We have previously held that a garden variety claim of excusable neglect, such as a simple miscalculation that leads a lawyer to miss a filing deadline, does not warrant [an exemption from the deadline],” Justice Stephen Breyer wrote in the majority opinion.

"But this case before us does not involve, and we are not considering, a garden variety claim of attorney negligence,” he said. “Rather, the facts of this case present far more serious instances of attorney misconduct.”

In Holland’s case, his court-appointed lawyer failed to file Holland’s appeal on time and appeared to be unaware of the date on which the appeal limitations period expired. This happened despite repeated letters and attempted communications by Holland with his lawyer, urging the lawyer to avoid running past the deadline. At one point the lawyer failed to communicate with Holland for several years despite letters from Holland pleading for information about his pending appeals.

“Here Holland not only wrote his attorney numerous letters seeking crucial information and providing direction; he also repeatedly contacted state courts, their clerks, and the Florida State Bar Association in an effort to have [his lawyer] – the central impediment to the pursuit of his legal remedy – removed from his case,” Breyer wrote. “The very day that Holland discovered that his AEDPA clock had expired due to [his lawyer’s] failings, Holland prepared his own habeas petition… and filed it with the district court.”

The Supreme Court remanded the case back to the Eleventh Circuit to determine whether the facts surrounding Holland’s attempted appeal entitle him to an exemption from the deadline and a new opportunity to file his appeal in federal court.

In a dissent, Justices Antonin Scalia and Clarence Thomas said AEDPA’s deadline should be strictly enforced. “The court’s impulse to intervene when a litigant’s lawyer has made mistakes is understandable; the temptation to tinker with technical rules to achieve what appears a just result is often strong, especially when the client faces a capital sentence,” Scalia wrote. “But the Constitution does not empower federal courts to rewrite, in the name of equity, rules that Congress has made.”

Gerald Kogan, a former chief justice of the Florida Supreme Court and co-chair of the Constitution Project’s Death Penalty Committee, praised the high court’s decision.

“Mr. Holland should not face the death penalty without the opportunity to exhaust all potentially valid legal claims, and those claims should not be barred due to the gross negligence of his state-appointed attorney,” Kogan said.

“This decision is a victory for basic fairness,” said John Holdridge, director of the American Civil Liberties Union Capital Punishment Project. “Disturbingly, there are death row inmates who have not been able to file a federal habeas petition because their attorneys missed a filing deadline,” he said. “For the first time, the court has held that they will now have an opportunity to show that they should be allowed to file a petition if the deadline has passed because of attorney misconduct or gross negligence.”

Holland was convicted in 1997 of first degree murder. After attacking and sexually assaulting a woman, Holland got into a scuffle with a police officer. He eventually grabbed the officer’s gun and shot him twice. Holland was sentenced to death and has been on Florida’s death row since his conviction.